

individual piece and the distance that the piece travels from origin to destination (i.e., the number of postal zones crossed). For the administration of the system of postal zones, the sphere of the earth is geometrically divided into units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. Postal zones are based on the distance between these units of area. The distance is measured from the center of the unit of area containing the sectional center facility (SCF) serving the origin post office to the SCF serving the destination post office. The SCF's serving the origin and destination post offices are determined by the appropriate SCF in L005, Column B.

Effective with the implementation of the Docket No. R2001-1 omnibus rate case, the longitude and latitude of 130 3-digit ZIP Code prefixes for SCF coordinates in L005, Column A, will be updated to reflect the parent SCF in L005, Column B. This update will align the 3-digit ZIP Code prefixes with current postal processing and distribution networks.

DMM G030.3.0 will be deleted because it repeats eligibility information for intra-BMC, inter-BMC, SCF, and delivery unit rates contained in other portions of the DMM.

The Postal Service Official National Zone Chart Data Program is administered from the National Customer Support Center (NCSC) in Memphis, TN. Single-page zone charts for originating mail are available online through Postal Explorer at <http://pe.usps.gov>. Zone chart data for the entire nation can be purchased in two formats: printed (about 500 pages) and electronic (3.5-inch diskettes). For more information, or to purchase zone charts, call the Zone Chart Program Administrator at 800-238-3150. The single-page zone chart program available online through Postal Explorer has been updated with a link to the updated zone chart data that would be effective, if this proposed rule is adopted, with the implementation date of the Docket No. R2001-1 omnibus rate case.

Comments are solicited on the proposed implementation date for this revision. The method of determining postal zones and the data coordinates for the SCFs are outside the scope of this rulemaking.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the

following proposed revisions of the DMM, incorporated by reference into the Code of Federal Regulations. (See 39 CFR part 111.)

#### List of Subjects in 39 CFR Part 111

Postal Service.

#### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001-3011, 3201-3219, 3403-3406, 3621, 3626, 5001.

2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

#### G General Information

##### G000 *The USPS and Mailing Standards*

\* \* \* \* \*

##### G030 *Postal Zones*

###### *Summary*

[Amend Summary text by removing the references to BMCs, SCF, and delivery unit zones to read as follows:]

G030 describes how postal zones are used to compute postage for zoned mail. It also defines local and nonlocal zones.

#### 1.0 BASIC INFORMATION

[Amend 1.0 by removing the last sentence and adding the following two sentences to read as follows:]

\* \* \* The distance is measured from the center of the unit of area containing the SCF serving the origin post office to the SCF serving the destination post office. The SCFs serving the origin and destination post offices are determined by using L005, Column B.

\* \* \* \* \*

#### 2.0 SPECIFIC ZONES

\* \* \* \* \*

#### 2.2 Nonlocal Zones

Nonlocal zones are defined as follows:

[Amend item 2.2a to read as follows:]

a. The zone 1 rate applies to pieces not eligible for the local zone in 2.1 that are mailed between two post offices with the same 3-digit ZIP Code prefix identified in L005, Column A. Zone 1 includes all units of area outside the local zone lying in whole or in part within a radius of about 50 miles from the center of a given unit of area.

[Remove 3.0 in its entirety.]

\* \* \* \* \*

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02-5486 Filed 3-6-02; 8:45 am]

BILLING CODE 7710-12-P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 261

[SW-FRL-7153-3]

#### Hazardous Waste Management System; Proposed Exclusions for Identifying and Listing Hazardous Waste

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rules and request for comment.

**SUMMARY:** The EPA (also, "the Agency" or "we" in this preamble) is proposing to exclude (or "delist") wastewater treatment plant sludge (from conversion coating on aluminum) generated by 11 automobile assembly facilities in the State of Michigan from the lists of hazardous wastes. The facilities include three plants owned and operated by General Motors Corporation (GM)(Pontiac East-Pontiac, Hamtramck-Detroit, Flint Truck-Flint), one plant owned and operated by GM with an onsite wastewater treatment plant owned by the City of Lansing and operated by Trigen/Cinergy-USFOS of Lansing LLC (Lansing Grand River-Lansing), three plants owned and operated by Ford Motor Company (Wixom Assembly Plant-Wixom, Michigan Truck/Wayne Integrated Stamping and Assembly Plant-Wayne, Dearborn Assembly-Dearborn), one plant owned and operated by Auto Alliance International Inc. (AAI), a Ford/Mazda joint venture company (Auto Alliance International Inc.-Flat Rock), and three plants owned and operated by DaimlerChrysler Corporation (Sterling Heights Assembly Plant-Sterling Heights, Warren Truck Plant-Warren, Jefferson North Assembly Plant-Jefferson).

The Agency is proposing to use an expedited process to evaluate these wastes under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). EPA requests comments on the pilot project. Each of these 11 facilities voluntarily requested to participate in the pilot project. Based on its evaluation of historical data, the Agency has

tentatively decided to grant an exclusion for each of these facilities, conditioned in part upon the facility's demonstration that the waste is nonhazardous. These proposed decisions, if finalized, will conditionally exclude these wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** We will accept public comments on these proposed decisions until April 22, 2002. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision. Comments which are meant to relate to a single facility or a subset of the 11 facilities must identify the facility(s) to which the comment applies.

Any person may request a hearing on any of these proposed decisions by filing a request with Robert Springer, Director, Waste, Pesticides and Toxics Division (D-8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604. Your request for a hearing must reach EPA by March 22, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

**ADDRESSES:** Please send two copies of your comments to Todd Ramaly, Waste Management Branch (DW-8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** The docket for these proposed rules is located at 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. The public may copy material from the docket at \$0.15 per page. For technical information concerning this document or to make appointment to view the docket, contact Todd Ramaly at the address above or at 312-353-9317.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

#### I. Overview

- A. What action is EPA proposing?
- B. Why is EPA proposing to grant, on an expedited basis, these delistings?
- C. What is unique about today's proposals?

#### II. Background

- A. What is the history of the delisting program?
- B. What is a delisting petition, and what does it require of a petitioner?
- C. What factors must EPA consider in deciding whether to grant a delisting petition?
- D. How will these actions affect the States?

#### III. The Expedited Delisting Project

- A. What is the Expedited Delisting Project?
- B. Does the project amend EPA's delisting petition regulations?

- C. Who is eligible to participate in the project?
- D. How does the project address wastes not yet generated?
- E. What is the standard automotive assembly plant process that generates F019 waste?
- F. What information will each facility submit under the project?
- G. What is required by the project's sampling and analysis plan?
- H. When would EPA finalize the proposed delistings?
- I. What support is MDEQ providing EPA in implementing the project?

#### IV. EPA's Evaluation of Waste Information and Data

- A. What information and analyses did EPA consider in developing these proposed delistings?
- B. How did EPA establish risk levels for these wastes?
- C. What are the maximum allowable concentrations of hazardous constituents in the waste?
- D. How will EPA evaluate the exclusion demonstration?

#### V. Conditions for Exclusion

- A. How will the petitioners manage the waste if it is delisted?
- B. How frequently must each facility test the waste?
- C. What must the facility do if the process changes?
- D. What happens if a facility's waste fails to meet the conditions of the exclusion?

#### VI. Regulatory Impact

#### VII. Regulatory Flexibility Act

#### VIII. Paperwork Reduction Act

#### IX. Unfunded Mandates Reform Act

#### X. Executive Order 12875

#### XI. Executive Order 13045

#### XII. Executive Order 13084

#### XIII. National Technology Transfer And Advancement Act

### I. Overview

#### A. What Action Is EPA Proposing?

The EPA is tentatively proposing to grant petitions to exclude, or delist, from the definition of hazardous waste, wastewater treatment sludge generated at 11 automotive assembly facilities in Michigan. As a pilot project, the EPA proposes to exclude these wastes using an expedited process. Prior to finalizing our decision, we will compare constituent levels in the waste to maximum allowable concentration levels established by a fate and transport model.

#### B. Why Is EPA Proposing To Grant, on an Expedited Basis, These Delistings?

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as hazardous waste (listed as "F019"). Previously, EPA granted has petitions to

delist F019 waste at automobile assembly plants. Based on available historical data and other information, EPA believes that a number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using standardized approaches for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. EPA believes that the project will be a more efficient way of making delisting determinations for this group of facilities. At the same time, EPA believes that these delisting determinations will be consistent with current laws and regulations and will be protective of human health and the environment.

#### C. What Is Unique About Today's Proposals?

Today's proposals, while consistent with the delisting petition regulations at 40 CFR 260.20 and 260.22, are unique in several important ways. Specifically, we are taking a standardized approach for the evaluation of petitions from multiple automotive assembly plants. In addition, EPA is identifying constituents of concern based on available historical data from waste generated at automotive assembly plants. Once the petitioner submits the analytical results of demonstration samples under § 260.22, EPA will determine whether the waste meets the maximum allowable concentration levels set forth in this proposal. Generally, EPA identifies constituents of concern for a particular facility from an analysis of its waste rather than relying on industry-wide historical data. By participating in the project, facilities agree that, if their waste is excluded, it must be disposed in a Subtitle D landfill with a liner and a leachate collection system. Typically, EPA only requires that excluded waste be disposed in a Subtitle D landfill, which may include older facilities that are unlined and without a leachate collection system. Finally, while we usually propose delistings one at a time, today we are proposing to simultaneously grant delistings for multiple facilities.

In addition to the proposed delistings, EPA is requesting comment on the pilot

project to expedite these delistings, which is described in section III, below.

## II. Background

### A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility that meets the listing description may not be.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows a person to demonstrate that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

### B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. The petitioner must show that the waste generated at a particular facility does not meet any of the criteria for listed wastes. The criteria for which EPA lists a waste are in 40 CFR 261.11 and in the background documents for the listed wastes.

In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

Once a waste has been delisted, a generator remains obligated under RCRA to confirm that its waste remains nonhazardous.

### C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in 40 CFR 260.22(a), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous. (See The Hazardous and Solid Waste Amendments (HSWA) of 1984.)

EPA must also consider mixtures containing listed hazardous wastes and wastes derived from treatment of listed hazardous waste as hazardous wastes. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion but remain hazardous wastes until excluded.

### D. How Will These Actions Affect States?

Because EPA is proposing today's exclusions under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. These exclusions may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge the petitioners to contact the state regulatory authority to establish the status of its waste under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If a facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before the facility can manage the waste as nonhazardous in that state.

## III. The Expedited Delisting Project

### A. What Is the Expedited Delisting Project?

On December 21, 2001, EPA signed a Memorandum of Understanding with the MDEQ to implement the pilot project titled: "Expedited Delisting of Aluminum Phosphating Sludge for Automobile Assembly Operations" (hereinafter the "Expedited Delisting Project" or "project"). In February 2002, the Agencies amended the Memorandum of Understanding to modify the eligibility requirements. A copy of the Amended Memorandum of Understanding (MOU) is available in the docket for these proposed rules. The Agencies agreed to implement the terms of the MOU as a five-year project. The purpose of the project is to more efficiently process delisting petitions from automobile assembly plants that generate F109 waste without using the hazardous constituents for which F019 was originally listed. The similarity of waste at these automotive assembly plants gives EPA and industry an opportunity to be more efficient.

EPA and MDEQ developed the project under the "Joint EPA/State Agreement to Pursue Regulatory Innovation" which encourages states to propose innovative approaches to environmental regulation to "find new, better, and more efficient and effective ways to improve environmental protection." See, 63 FR 24785, May 5, 1998. Consistent with the joint agreement, the project was developed with the input of "stakeholders," i.e., representatives of the automobile industry (Ford Motor Company and General Motors Corporation) and an environmental organization (The Ecology Center). In December 2001, MDEQ notified the stakeholders that the agencies had signed the MOU.

As described in section I.C, above, the Expedited Delisting Project takes a new approach in the way EPA implements its delisting regulations for a group of similar facilities. Because of the availability of historical data and the similarities among these facilities, EPA and MDEQ developed, under the Expedited Delisting Project, a uniform approach for the submission and evaluation of petitions made by automotive assembly plants to delist F019 waste. First, EPA usually requires the petitioner to submit a manufacturing process description specific to its facility. However, under the Expedited Delisting Project, each facility must certify that it uses the standard automotive assembly manufacturing process that generates F019 waste. Second, EPA requires a petitioner to

submit analytical results of demonstration samples. Generally, petitioners work separately with EPA to develop a sampling and analysis plan to comply with this section. Under the project, each petitioner will use the same pre-approved sampling and analysis plan. Third, EPA identifies constituents of concern and sets maximum allowable concentrations for those constituents in the waste separately for each facility. Under the project, EPA is establishing a set of constituents of concern and corresponding maximum allowable concentrations that are the same for a group of automotive assembly facilities.

Another significant innovation is that the facilities participating in the project will dispose of excluded waste in a lined landfill with a leachate collection system. Generally, under previous exclusions, wastes may be sent to any Subtitle D landfill, including older facilities that may not be lined or have a leachate collection system.

Finally, today EPA is simultaneously proposing multiple delistings. Typically, EPA proposes delistings one at a time.

EPA requests comments on the Expedited Delisting Project described in this section.

#### *B. Does the Project Amend EPA's Delisting Petition Regulations?*

The Expedited Delisting Project is not an amendment to the delisting petition regulations at 40 CFR 260.20 and 260.22. Rather, the project represents a new approach in EPA's implementation of these delisting petition regulations. Participation in the project is voluntary. Automobile assembly plants not participating may follow the usual process for delisting.

Today's description of the Expedited Delisting Project (apart from the proposed delistings themselves) provides guidance to EPA, facilities participating in the project, and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern the delisting of F019 waste generated by automotive assembly plants in Michigan. The statutory provisions and EPA regulations described in this project contain legally binding requirements. This project does not substitute for those provisions or regulations, nor is it a regulation itself. However, the proposed delistings, if finalized, will be rules imposing legally binding requirements. EPA retains the discretion to adopt approaches on a case-by-case basis that differ from the project where appropriate. Any decisions regarding a particular

facility's waste will be made based on the statute and regulations. EPA will consider whether or not the project is appropriate in a particular situation. The project will be subject to periodic evaluation and may be revised without public notice.

#### *C. Who Is Eligible To Participate in the Project?*

The MOU states the eligibility requirements for the project, which are summarized in this section. Subject to approval, Michigan automobile or light duty truck assembly facilities, which use, or intend to use, the zinc phosphating process on aluminum described in the MOU, are eligible to participate in the Expedited Delisting Project. Consistent with the MOU, the facility must submit to the EPA and the MDEQ a letter requesting to participate in the Expedited Delisting Project to delist its F019 wastewater treatment sludge.

In January 2002, a total of 14 facilities requested to participate in the project. In February of 2002, MDEQ, with EPA approval, notified 11 plants<sup>1</sup> that they are eligible to participate in the Expedited Delisting Project. Of the 11 participating facilities, the following are currently using aluminum and are generating F019 waste: Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant, 38303 Michigan Avenue/37625 Michigan Avenue, Wayne, MI 48184, RCRA ID No. MID000809228/MID0005379706; Ford Motor Company—Wixom Assembly Plant, 28801 Wixom Road, Wixom, MI 48393, RCRA ID No. MID005379714; General Motors—Flint Truck, G-3100 Van Slyke Road, Flint, MI 48551, RCRA ID No. MID005356951; General Motors—Hamtramck, 2500 E. General Motors Blvd., Detroit, MI 48211, RCRA ID No. MID980795488; General Motors—Pontiac East, 2100 S. Opdyke Road, Pontiac, MI 48341, RCRA ID No. MID0053546902; Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation—Lansing Grand River, 920 Townsend Ave., Lansing, MI 48921, RCRA ID No. MIK211915624. The following participating facilities are not yet using aluminum and do not generate F019 at this time: Ford Motor Company—Dearborn Assembly Plant, 3001 Miller Road, Dearborn, MI 48121, RCRA ID No. MID000809764; Auto Alliance International Inc. (Ford/Mazda Joint Venture Company), 1 International Drive, Flat Rock, MI 48134-9498, RCRA

<sup>1</sup> Three facilities withdrew their requests to participate at this time, but may request to participate in the future.

ID No. MID981953912; DaimlerChrysler—Jefferson North Assembly Plant, 2101 Conner Avenue, Detroit, MI 48215, RCRA ID No. MID985569987; DaimlerChrysler—Warren Truck Assembly Plant, 21500 Mound Round, Warren, MI 48091, RCRA ID No. MID005358007; DaimlerChrysler—Sterling Heights Assembly Plant, 38111 Van Dyke, Sterling Heights, MI 48312, RCRA ID No. MID980896690.

#### *D. How Does the Project Address Wastes Not Yet Generated?*

The project will include some facilities which do not yet perform the conversion coating on aluminum resulting in F019. We grant up-front delistings for wastes that have not yet been generated, but will be generated in the future, based on available data (e.g. pilot scale system data). Consistent with previous up-front delistings, the up-front delistings proposed today will be contingent upon verification testing of the waste water treatment sludge once the facility begins conversion coating on aluminum (see section V.A., Conditions for Exclusion).

#### *E. What Is the Standard Automotive Assembly Plant Process That Generates F019 Waste?*

F019 is a wastewater treatment sludge generated from rinses and overflows from the conversion coating of aluminum. Wastewaters from other automobile assembly operations, including electrocoating and spray booth operations, are commingled with the conversion coating wastewater prior to treatment. The conversion coating, electrocoating and spray booth operations which may contribute constituents of concern in the sludge are summarized in this section.

Prior to the zinc phosphating process, fully assembled metal car bodies, parts, and spaceframe assemblies are cleaned with various alkaline cleaners, surfactants, and/or organic detergents. Following cleaning, rinse conditioners are employed to create nucleation sites prior to conversion coating. In the conversion coating step, parts are sprayed with or immersed in a zinc phosphate solution to create a uniform surface for painting. A sealer may be applied after conversion coating and a buffer is sometimes added during this step. Rinses and overflows from the conversion coating process are likely to contain trivalent chromium, nickel, and zinc. The zinc phosphating process used at these facilities today does not use hexavalent chromium or cyanide, for which F019 was originally listed.

Following the phosphating process, the metal parts are immersed in a bath where an electrocoating of paint is applied. Any undeposited paint is rinsed and recovered in subsequent stages prior to oven baking.

After conversion coating and electrocoating, various paints and top coats are applied to the automobile bodies/parts in spray booths. Some facilities use a water curtain to control emissions which is discharged to the wastewater treatment plant.

Overflows and rinse water from the electrocoating process and wastewater from the paint booths can contain hazardous constituents such as metals, organic solvents or formaldehyde.

Typical wastewater treatment plant operations begin with separation of large particles. The wastewater is then sent to various thickeners and clarifiers where water and solids are further separated. The pH of the wastewater might be adjusted and flocculents and coagulants may be added to facilitate the thickening process. The sludge from the thickeners and clarifiers is dewatered in a filter press.

#### *F. What Information Will Each Facility Submit Under the Project?*

Each facility participating in the project must submit a brief written application, consistent with the MOU, demonstrating that its waste qualifies for exclusion or delisting (the "exclusion demonstration").<sup>2</sup> The exclusion demonstration must show the following on the basis of sampling data consistent with the approved sampling and analysis plan: (1) That the wastewater treatment sludge meets the criteria set forth in the Table of Maximum Allowable Concentrations; (2) that the wastewater treatment sludge is not characteristically hazardous waste under 40 CFR part 261, subpart C; and (3) that the wastewater treatment sludge does not contain other hazardous waste listed under part 261, subpart D.

Each exclusion demonstration shall also include the following: (1) All sampling data required by and consistent with the approved sampling and analysis plan; (2) a description of the waste, including, but not limited to, (i) any factors which may cause the waste to be a hazardous waste, and (ii) the maximum annual quantities of

<sup>2</sup> Trigen/Cinergy-USFOS of Lansing LLC (Trigen) must submit its exclusion demonstration jointly with GM. Trigen must also certify, in accordance with 40 CFR 260.22(i)(12), that (1) the Trigen wastewater treatment plant is located on the GM Lansing Grand River facility property and (2) the Trigen wastewater treatment plant does not receive any waste or wastewater from sources other than the GM Lansing Grand River facility.

waste covered by the demonstration; (3) a statement that the facility is an automobile assembly facility using the standard manufacturing processes as stated in the MOU;<sup>3</sup> (4) an assertion that the F019 waste does not meet the criteria for which this type of waste was listed as a hazardous waste; (5) the certification as required by § 260.22(i)(12).

#### *G. What Is Required by the Project's Sampling and Analysis Plan?*

The sampling and analysis plan describes the sampling objectives, sampling strategy, collection procedures, and quality assurance/quality control (QA/QC) procedures in detail. The plan also discusses the procedures that all facilities participating in the project will use for sample labeling and documentation, equipment preparation and cleaning, and sample shipment. Each facility will collect composite samples from each of six roll-off boxes of wastewater treatment sludge over at least six weeks at each facility.

When aluminum is first conversion coated at a facility which does not currently use aluminum, the facility will collect initial verification samples from each of four roll-off boxes and will analyze them for the constituents of concern. When production using conversion coating on aluminum first reaches 50 units a day, additional samples from each of four roll-off boxes will be collected and analyzed for the constituents of concern.

Each facility will also conduct quarterly verification sampling.

All data collected must include the appropriate QA/QC information and be subject to data validation as described in the approved sampling and analysis plan. Each facility will submit the analytical methods and detection levels to be used prior to sampling.

The sampling and analysis plan is an appendix to the MOU for the Expedited Delisting Project and is available in the docket.

#### *H. When Would EPA Finalize the Proposed Delistings?*

HSWA specifically requires EPA to provide notice and an opportunity for

<sup>3</sup> To the extent that a participating facility's process differs from the process set forth in the MOU, the facility shall describe any such differences that might result in a hazardous constituent being present in the wastewater treatment sludge that is not covered by the demonstration, i.e., not included in the Table of Maximum Allowable Concentrations. Facilities that identify differences that the EPA believes will not materially impact wastewater treatment sludge quality may still be considered for delisting consistent with the time frame set forth in section III.H, below.

comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has considered and addressed all timely public comments on today's proposal, including any comments made at public hearings. For those facilities named in today's proposal which submit their exclusion demonstrations in a timely manner, EPA Region 5 will decide whether or not to exclude their waste within 128 days after the close of the public comment period. The exclusions will become effective on the publication date of the final rule in the **Federal Register**.

Since these rules would reduce the existing requirements, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA.

#### *I. What Support Is MDEQ Providing EPA in Implementing the Project?*

MDEQ will be providing important assistance to EPA during the life of the project. MDEQ will provide technical support in reviewing exclusion demonstrations and all verification sampling data and will participate in periodic evaluations of the project.

### **IV. EPA's Evaluation of Waste Information and Data**

#### *A. What Information and Analyses Did EPA Consider in Developing These Proposed Delistings?*

The EPA reviewed existing data submitted in support of five petitions to delist automotive assembly plant F019 sludge. Three were granted by EPA: GM in Lake Orion, Michigan (62 FR 55344, October 24, 1997); GM in Lansing, Michigan (65 FR 31096, May 16, 2000); and BMW Manufacturing Corporation in Greer, South Carolina (66 FR 21877, May 2, 2001). Petitions to exclude F019 at GM plants located in Lordstown, Ohio and Oklahoma City, Oklahoma have not been acted upon by EPA. The F019 waste from these facilities was sampled in accordance with approved sampling and analysis plans and analyzed for a comprehensive list of constituents. These analyses included total and Toxicity Characteristic Leaching Procedure (TCLP) analysis for volatile and semivolatile organic compounds and metals. These wastes were also analyzed for cyanide, sulfide, fluoride, formaldehyde, pH, and other parameters.

EPA also considered an industry database submitted jointly by the Aluminum Association and the Alliance of Automobile Manufacturers. This database contained waste data generated

over ten years and included a range of analyses of F019 and non-F019 wastewater treatment plant sludge generated at some automotive assembly plants. The analytes and number of samples collected varied by plant and the database did not include QA/QC information.

EPA used the available historical data in conjunction with a fate and transport model to define a list of approximately 70 constituents of concern for the exclusion demonstration analysis. Specifically, EPA compared the maximum observed concentration of any hazardous constituent detected at least once in any of the historical data to the most conservative delisting levels developed for the project. EPA identified a constituent for analysis if the observed value was within three orders of magnitude of this delisting level. The list of 70 constituents of concern also included the non-pesticide constituents in 40 CFR 261.24 and constituents associated with painting operations.

*B. How Did EPA Establish Risk Levels for These Wastes?*

In developing this proposal, we considered the original listing criteria and the additional factors required by the HSWA. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3). These factors include: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the

concentration of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) its persistence in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

Consistent with previous proposed delistings, EPA identified plausible exposure routes (ground water, surface water, air) for hazardous constituents present in the petitioned waste based on improper management of a Subtitle D landfill. To evaluate the waste, we used the Delisting Risk Assessment Software program (DRAS), a Windows based software tool, to estimate the potential release of hazardous constituents from the waste and to predict the risk associated with those releases. For a detailed description of the DRAS program and revisions see 65 FR 58015, September 27, 2000; 65 FR 59000, November 7, 2000; and 65 FR 75879, December 5, 2000.

Today's proposal contains one proposed revision to the DRAS program. Previously, the Henry's Law Constant used to estimate the volatilization rate of formaldehyde in groundwater for the shower-inhalation scenario was estimated using a relationship based on molecular weight, solubility, and pure vapor pressure taken from the *Handbook of Chemical Property Estimation Methods*, W.J. Lyman, W.F. Reehl, and D.H. Rosenblatt, 1982, McGraw-Hill Book Company, New York, New York. In 1988, Eric A.

Betterton and Michael R. Hoffman published *Henry's Law Constants of Some Environmentally Important Aldehydes in Environmental Science and Technology*, Volume 22, Number 12, in which observed Henry's Law constants for low concentrations of aldehydes in water were lower than those expected using the earlier relationship. These empirical results reflect the increased affinity for water by formaldehyde. We believe these empirical results more accurately reflect the conditions modeled in the DRAS groundwater inhalation scenario and we are using the revised Henry's Law constant for this proposal. A technical support document for the DRAS program, as well as documentation of the formaldehyde references, are available in the docket.

*C. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?*

The following table gives the maximum allowable concentration levels for the 70 constituents of concern based on a target cancer risk of  $1 \times 10^{-6}$  and a target hazard quotient of one. The levels are expressed both as total constituent concentrations and TCLP concentrations. Since the allowable levels are dependent on the annual volume generated, the table includes allowable levels at three different volumes which span the typical range of waste generated. The table also includes the maximum allowable groundwater concentration expected at the disposal site.

TABLE OF MAXIMUM ALLOWABLE CONCENTRATIONS EXPEDITED DELISTING PROJECT

Constituent	CAS #	Maximum allowable concentrations in the waste						Maximum allowable groundwater concentration (µg/L)
		1000 cubic yards		2000 cubic yards		3000 cubic yards		
		Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
<b>Volatile Organic Compounds</b>								
acetone .....	67–64–1	NA	375	NA	228	NA	171	3,750
acetonitrile .....	75–05–8	NA	64.2	NA	39.2	NA	29.3	643
acrylonitrile .....	107–13–1	6,370	0.0128	4,120	0.0078	3,200	0.00584	0.135
allyl chloride .....	107–05–1	2,540	0.563	1,640	0.344	1,270	0.257	10.7
benzene .....	71–43–2	NA	0.238	NA	0.145	NA	0.109	2.50
carbon tetrachloride .....	56–23–5	NA	0.0738	NA	0.045	NA	0.0337	0.562
chlorobenzene .....	108–90–7	NA	9.98	NA	6.08	NA	4.56	100
chloroform .....	67–66–3	NA	0.128	6,530	0.0779	5,080	0.0583	1.35
1,1 dichloroethane .....	75–34–3	NA	19.7	NA	12	NA	9	3,750
1,2 dichloroethane .....	107–06–2	NA	0.00422	NA	0.00257	9,800	0.00193	0.800
1,1-dichloroethylene .....	75–35–4	1,340	0.015	867	0.00702	674	0.00526	0.122
cis-1,2 dichloroethylene ...	156–59–2	NA	6.98	NA	4.26	NA	3.19	70.0
trans-1,2 dichloroethylene .....	156–60–5	NA	9.98	NA	6.08	NA	4.56	100
ethylbenzene .....	100–41–4	NA	69.8	NA	42.6	NA	31.9	700
formaldehyde .....	50–00–0	1,070	138	689	84.2	535	63	1,380
methyl chloride (chloromethane) .....	74–87–3	5,760	0.295	3,720	0.180	2,890	0.135	5.63
methyl ethyl ketone .....	78–93–3	NA	200	NA	200	NA	200	22,600
methyl isobutyl ketone .....	108–10–1	NA	300	NA	183	NA	137	3,000

TABLE OF MAXIMUM ALLOWABLE CONCENTRATIONS EXPEDITED DELISTING PROJECT—Continued

Constituent	CAS #	Maximum allowable concentrations in the waste						Maximum allowable groundwater concentration (µg/L)
		1000 cubic yards		2000 cubic yards		3000 cubic yards		
		Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
methyl methacrylate .....	80-62-6	NA	NA	NA	NA	NA	7,690	52,700
methylene chloride .....	75-09-2	NA	0.473	NA	0.288	NA	0.216	5
n-butyl alcohol .....	71-36-3	NA	375	NA	228	NA	171	3,750
styrene .....	100-42-5	NA	9.98	NA	6.08	NA	4.56	100
1,1,1,2-tetrachloroethane .....	630-20-6	NA	0.399	NA	0.243	NA	0.182	2.81
1,1,2,2-tetrachloroethane .....	79-34-5	274	0.720	152	0.439	108	0.329	0.366
tetrachloroethylene .....	127-18-4	NA	0.14	NA	0.0855	NA	0.064	1.40
toluene .....	108-88-3	NA	99.8	NA	60.8	NA	45.6	1,000
1,1,1-trichloroethane .....	71-55-6	NA	20	NA	12.2	NA	9.11	200
1,1,2-trichloroethane .....	79-00-5	NA	0.128	NA	0.078	NA	0.0584	1.28
trichloroethylene .....	79-01-6	NA	0.5	NA	0.304	NA	0.228	5.00
vinyl acetate .....	108-05-4	NA	1,440	NA	879	NA	658	15,200
vinyl chloride .....	75-01-4	178	0.00384	115	0.00234	89.4	0.00175	0.0384
xylene .....	95-47-6	NA	998	NA	608	NA	456	10,000
	108-38-3							
	106-42-3							
<b>Semivolatile Organic Compounds</b>								
acrylamide .....	79-06-1	2,940	0.00196	2,710	0.0012	2,580	0.0009	0.0163
bis(2-ethylhexyl) phthalate .....	117-81-7	NA	0.147	NA	0.0896	NA	0.0671	1.47
butyl benzyl phthalate .....	85-68-7	NA	152	NA	92.9	NA	69.6	1,450
o-cresol .....	95-48-7	NA	187	NA	114	NA	85.5	1,875
m-cresol .....	108-39-4	NA	187	NA	114	NA	85.5	1,875
p-cresol .....	106-44-5	NA	18.7	NA	11.4	NA	8.55	188
1,4-dichlorobenzene .....	106-46-7	NA	0.227	NA	0.139	NA	0.104	2.40
2,4-dimethylphenol .....	105-67-9	NA	74.9	NA	45.7	NA	34.2	750
2,4-dinitrotoluene .....	121-14-2	NA	0.0107	NA	0.00654	NA	0.0049	0.107
di-n-octyl phthalate .....	117-84-0	NA	0.184	NA	0.112	NA	0.0839	1.30
hexachlorobenzene .....	118-74-1	2.84	0.000159	1.58	$9.67 \times 10^{-5}$	1.12	$7.24 \times 10^{-5}$	0.00168
hexachlorobutadiene .....	87-68-3	537	0.0158	299	0.00961	212	0.0072	0.167
hexachloroethane .....	67-72-1	NA	0.289	NA	0.176	NA	0.132	3.06
naphthalene .....	91-20-3	NA	24.5	NA	15	NA	11.2	246
nitrobenzene .....	98-95-3	NA	1.87	NA	1.14	NA	0.855	18.8
pentachlorophenol .....	87-86-5	4,980	0.00672	2,770	0.004	1,960	0.00307	0.0711
pyridine .....	110-86-1	NA	3.75	NA	2.28	NA	1.71	37.4
2,4,5-trichlorophenol .....	95-95-4	NA	150	NA	91.6	NA	68.6	1,500
2,4,6-trichlorophenol .....	88-06-2	NA	0.453	NA	0.276	NA	0.207	4.79
<b>Metals</b>								
antimony .....	7440-36-0	NA	1.08	NA	0.659	NA	0.494	6.00
arsenic .....	7440-38-2	8,820	0.492	8,140	0.3	7,740	0.224	4.87
barium .....	7440-39-3	NA	100	NA	100	NA	100	2,000
beryllium .....	7440-41-7	NA	2.18	NA	1.33	NA	0.998	4.00
cadmium .....	7440-43-9	NA	0.788	NA	0.48	NA	0.36	5.00
chromium .....	7440-47-3	NA	5	NA	4.95	NA	3.71	100
cobalt .....	7440-48-4	NA	118	NA	72.1	NA	54	2,250
lead .....	7439-92-1	NA	5	NA	5	NA	5	15.0
mercury .....	7439-97-6	16	0.2	8.92	0.2	6.34	0.2	2.00
nickel .....	7440-02-0	NA	148	NA	90.5	NA	67.8	750
selenium .....	7782-49-2	NA	1.0	NA	1.0	NA	1.0	50.0
silver .....	7440-22-4	NA	5.0	NA	5.0	NA	5.0	187
thallium .....	7440-28-0	NA	0.462	NA	0.282	NA	0.211	2.00
tin .....	7440-31-5	NA	1,180	NA	721	NA	540	22,500
vanadium .....	7440-62-2	NA	111	NA	67.6	NA	50.6	263
zinc .....	7440-66-6	NA	1,470	NA	898	NA	673	11,300
<b>Miscellaneous</b>								
corrosivity (pH) .....	NA		2.0 < pH < 12.5	See 40 CFR 261.22				NA
cyanide .....	57-12-5		18.9	11.5		8.63		200
ignitability .....	NA		flashpoint > 140°F	See 40 CFR 261.21				NA
reactivity .....	NA			See 40 CFR 261.23				NA
sulfide .....	18496-25-8			See 40 CFR 261.23				NA

NA: The program did not calculate a delisting level for this constituent, or the delisting level was higher than those levels expected to be found in the waste. In the event high levels are discovered, the constituent will be evaluated and a delisting level set in accordance with the methodology used to set delisting levels for the other constituents.

Total cyanide and sulfide analysis will also be conducted, although delisting levels for total concentrations have not been established for cyanide and sulfide. The results will be used to support a qualitative statement by the petitioner that the waste is not reactive as defined in 40 CFR 261.23.

#### *D. How Will EPA Evaluate the Exclusion Demonstration?*

EPA will confirm that sample collection, data analysis, and elements of QA/QC analysis are in accordance with the approved sampling and analysis plan. EPA will compare the maximum value of each constituent detected at a given facility to the maximum allowable concentration levels set forth in this proposal.

The EPA will use the DRAS program to estimate the aggregate cancer risk and hazard index for each facility's waste. The aggregate cancer risk is the cumulative total of all individual constituent cancer risks. The hazard index is a similar cumulative total of non-cancer effects. The target aggregate cancer risk is  $1 \times 10^{-5}$  and the target hazard index is one.

In addition, EPA will review any process information which differs from the standard process described above.

#### **V. Conditions for Exclusion**

##### *A. How Will the Petitioners Manage the Waste if It Is Delisted?*

If the petitioned waste is delisted, the facility must dispose of it in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258 and certify to this annually.

The facilities granted an up-front exclusion must conduct initial verification testing. These facilities must handle the wastewater treatment sludge generated after aluminum parts are first subjected to conversion coating as hazardous until 15 calendar days after EPA receives the initial verification data. If EPA notifies the facility during the 15-day period that the data is unacceptable, the facility must continue to handle the waste as hazardous.

##### *B. How Frequently Must Each Facility Test the Waste?*

After the exclusion becomes effective, and any necessary initial verification testing has been completed, each facility shall collect and analyze a representative sample on a quarterly basis to verify that the waste continues to meet the requirements of this proposal. The sample must be collected in accordance with the approved sampling plan. The verification samples need to be analyzed for only those constituents which were originally

detected in the exclusion demonstration.

Each facility must submit the verification data on an annual basis. The annual submittal of verification data and disposal certification must be made to both Region 5 Waste Management Branch, U.S. EPA, at 77 West Jackson Boulevard, Mail Code DW-8J, Chicago, Illinois 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

##### *C. What Must the Facility Do if the Process Changes?*

If a facility significantly changes the manufacturing process, the treatment process, or the chemicals used, the facility may not handle the sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the criteria set in section IV.C and that no new hazardous constituents listed in appendix VIII of 40 CFR part 261 have been introduced. The facility must manage wastes generated after the process change as hazardous waste until it receives written approval for continuance of the exclusion from the Agency.

##### *D. What Happens if a Facility's Waste Fails To Meet the Conditions of the Exclusion?*

If a facility with sludge excluded under this project violates the terms and conditions established in the exclusion, the Agency may suspend the exclusion or may start procedures to withdraw the exclusion.

If the quarterly testing of the waste does not meet the delisting levels described in section IV.C above, the facility must notify the EPA and MDEQ immediately at the addresses listed in section V.B, above. The exclusion will be suspended and the waste managed as hazardous until the facility has received written approval for continuance of the exclusion from the Agency. The facility may provide any information and sampling results that support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative

Procedures Act, 5 U.S.C. 551 (1978) et seq. (APA), to reopen a delisting decision if we receive information indicating that the conditions of this exclusion have been violated.

#### **VI. Regulatory Impact**

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

#### **VII. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to eleven facilities. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

#### **VIII. Paperwork Reduction Act**

Information collection and recordkeeping requirements associated



with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96-511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050-0053.

#### **IX. Unfunded Mandates Reform Act**

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector estimated to cost \$100 million or more in any one year. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

#### **X. Executive Order 12875**

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal

government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### **XI. Executive Order 13045**

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

#### **XII. Executive Order 13084**

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's

prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### **XIII. National Technology Transfer And Advancement Act**

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

#### **List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 22, 2002.

**Robert Springer,**

*Director, Waste, Pesticides and Toxics Division.*

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

#### **PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 it is proposed to add the following waste streams in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
<p style="text-align: center;">*                    *                    *</p> <p>Auto Alliance International Inc. (Ford/Mazda Joint Venture Company)—Flat Rock, Michigan.</p>	<p style="text-align: center;">*                    *                    *</p> <p>Waste water treatment plant sludge, F019, that is generated by Auto Alliance International Inc., Flat Rock, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).</p> <ol style="list-style-type: none"> <li>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents and delisting levels from section IV.C of the preamble)</li> <li>2. <i>Initial Verification Testing:</i> a. When aluminum parts are first subjected to conversion coating, the facility must collect 4 additional samples and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan. The facility must manage as hazardous all wastewater treatment sludge generated after aluminum parts are first subjected to conversion coating, until 15 calendar days after EPA receives valid data demonstrating that paragraph (1) is satisfied, unless EPA notifies the facility during the 15-day period that the data is unacceptable. <ul style="list-style-type: none"> <li>b. When production using conversion coating on aluminum first reaches 50 units a day, the facility must collect 4 additional samples and analyze them for the constituents listed in paragraph (1) using the methodologies specified in an EPA-approved sampling plan.</li> <li>c. The verification data required in paragraphs (2.a) and (2.b) must be submitted as soon as the data becomes available.</li> </ul> </li> <li>3. <i>Quarterly Verification Testing:</i> After the facility satisfies the requirements of paragraph (2.a), it must, on a quarterly basis, collect and analyze one sample of the waste for the constituents detected in pre-aluminum sampling and the sampling required in paragraph (2) using the methodologies specified in an EPA-approved sampling plan.</li> <li>4. <i>Changes in Operating Conditions:</i> The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. The facility must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA.</li> <li>5. <i>Data Submittals:</i> The facility must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW-8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).</li> <li>6. <i>Reopener Language—</i>(a) If, anytime after disposal of the delisted waste, the facility possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in paragraph (1) is at a level in the leachate higher than the delisting level established in paragraph (1), or is at a level in the groundwater higher than the point of exposure groundwater levels referenced by the model, then the facility must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. <ul style="list-style-type: none"> <li>(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</li> </ul> </li> </ol>

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
DaimlerChrysler Corporation, Jefferson North Assembly Plant—Detroit, Michigan.	(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days the facility presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.
DaimlerChrysler Corporation, Sterling Heights Assembly Plant—Sterling Heights, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Jefferson North Assembly Plant, Detroit, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
DaimlerChrysler Corporation, Warren Truck Assembly Plant—Warren, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Sterling Heights Assembly Plant, Sterling Heights, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
Ford Motor Company, Dearborn Assembly Plant—Dearborn, Michigan.	Waste water treatment plant sludge, F019, that is generated by DaimlerChrysler Corporation at the Warren Truck Assembly Plant, Warren, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
Ford Motor Company, Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant—Wayne, Michigan.	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Dearborn Assembly Plant, Dearborn, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). The conditions in paragraphs (1) through (6) for Auto Alliance International Inc., Flat Rock, Michigan apply.
Ford Motor Company, Wixom Assembly Plant—Wixom, Michigan.	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wayne Integrated Stamping and Assembly Plant from wastewaters from both the Wayne Integrated Stamping and Assembly Plant and the Michigan Truck Plant, Wayne, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date). 1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste). 2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan. 3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
General Motors Corporation, Flint Truck—Flint, Michigan	<p>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).</p> <p>2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan.</p> <p>3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.</p> <p>Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Flint Truck, Flint, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).</p>
General Motors Corporation, Hamtramck—Detroit, Michigan.	<p>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).</p> <p>2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan.</p> <p>3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.</p> <p>Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Hamtramck, Detroit, Michigan at a maximum annual rate of (annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).</p>
General Motors Corporation, Pontiac East—Pontiac, Michigan.	<p>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).</p> <p>2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan.</p> <p>3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.</p> <p>Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Pontiac East, Pontiac, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of (insert final publication date).</p>
Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation, Lansing Grand River—Lansing, Michigan.	<p>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).</p> <p>2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan.</p> <p>3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.</p> <p>Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lansing Grand River (GM—Grand River) facility by Trigen/Cinergy-USFOS of Lansing LLC exclusively from wastewaters from GM—Grand River, Lansing, Michigan at a maximum annual rate of (insert annual volume) cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of (insert final publication date).</p> <p>1. <i>Delisting Levels:</i> The total constituent concentrations and TCLP concentrations measured in any sample may not exceed the following levels: (insert constituents of concern and delisting levels based on the annual volume of waste).</p>

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
<p>[FR Doc. 02–5314 Filed 3–6–02; 8:45 am]            BILLING CODE 6560–50–P</p> <p><b>ENVIRONMENTAL PROTECTION AGENCY</b></p> <p><b>40 CFR Part 281</b></p> <p><b>[FRL–7154–2]</b></p> <p><b>Nebraska: Tentative Approval of Nebraska Underground Storage Tank Program</b></p> <p><b>AGENCY:</b> Environmental Protection Agency (EPA).</p> <p><b>ACTION:</b> Proposed rule; tentative determination on application of State of Nebraska for final approval; public comment period.</p> <p><b>SUMMARY:</b> Nebraska has applied to EPA for final approval of its underground storage tank (UST) program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the Nebraska application and has made a tentative determination that Nebraska's UST program satisfies all of the requirements necessary to qualify for final approval. Thus, by this proposed rule, EPA is providing notice that EPA intends to grant final approval to Nebraska to operate its UST program in lieu of the Federal program. Nebraska's application for approval is available for public review and comment, and a public hearing will be held to solicit comments on the application, if there is significant public interest expressed.</p> <p><b>DATES:</b> A public hearing will be scheduled if there is sufficient public interest communicated to EPA by April 8, 2002. EPA will determine by April 22, 2002, whether there is significant interest to hold the public hearing. The State of Nebraska will participate in such public hearing held by EPA on this subject. Written comments on the Nebraska approval application, as well as requests to present oral testimony, must be received by the close of business on April 8, 2002.</p>	<p>2. <i>Quarterly Verification Testing:</i> The facility must show that the waste does not contain constituents listed in paragraph (1) that exceed the delisting levels specified in paragraph (1) by collecting and analyzing one waste sample on a quarterly basis. The samples must be collected and analyzed in accordance with the approved sampling plan.</p> <p>3. <i>Other Conditions:</i> The conditions in paragraphs (4) through (6) for Auto Alliance International Inc., Flat Rock, Michigan also apply.</p> <p>* * * * *</p> <p><b>ADDRESSES:</b> Send written comments to Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Nebraska's application during normal business hours at the following addresses: The Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska, 68509, telephone: (402) 471–3557; The U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235 Jefferson Davis Highway, Arlington, Virginia 22202, telephone: (703) 603–9230, and EPA Region 7, Library, 901 N. 5th Street, Kansas City, KS 66101. If sufficient public interest is expressed, EPA will hold a public hearing on the State of Nebraska's application for program approval. Anyone wishing to learn the status of the public hearing on the State's application may telephone the following contacts after April 22, 2002: Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7268; David Chambers, Supervisor, Leaking Underground Storage Tanks Program, Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 N Street, Lincoln, Nebraska 68509, (402) 471–4230.</p> <p><b>FOR FURTHER INFORMATION CONTACT:</b> Linda Garwood, EPA Region 7, ARTD/USTB, 901 North 5th Street, Kansas City, Kansas 66101.</p> <p><b>SUPPLEMENTARY INFORMATION:</b></p> <p><b>A. Background</b></p> <p>Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for Underground Storage Tanks (UST) systems as may be necessary to protect human health and the environment, and procedures for approving State programs in lieu of the Federal program. EPA promulgated State program approval procedures at 40 CFR part 281. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program is “no less stringent” than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (information-gathering) and 9006 (Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the state authorized analogues to these provisions.</p> <p><b>B. Nebraska UST Program</b></p> <p>The UST program in Nebraska is implemented jointly by the Nebraska Department of Environmental Quality (NDEQ) and the Nebraska State Fire Marshal (NSFM). Section 81–15, 118 of the Nebraska Revised Statutes (N.R.S.) designates NDEQ as the lead agency for the UST program, but specifies that NSFM will conduct preventative activities under an interagency agreement with NDEQ.</p> <p>The State of Nebraska initially submitted a state program approval application to EPA by letter dated December 15, 2000. Additional information was provided by Nebraska on March 21, 2001. EPA evaluated that information as well as other issues and determined the application package met all requirements for a complete program application. On December 5, 2001, EPA notified Nebraska that the application package was complete.</p> <p>Included in the State's Application is an Attorney General's statement. The Attorney General's statement provides an outline of the State's statutory and</p>